UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NESTLE PURINA PETCARE COMPANY, Employer, and LOCAL UNION NO.1 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Petitioner.	)	Case 14-RC-145222

OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW

Pursuant to Section 102.67(e) of the Board's Rules and Regulations, Local Union No. 1 of the International Brotherhood of Electrical Workers, AFL-CIO, hereby files this Statement in Opposition to the Employer's Request for Review.

I. INTRODUCTION

By Decision dated February 23, 2015, the Regional Director for Region 14 found a unit of all full-time and regular part-time maintenance employees, including the maintenance leadman, employed by the Employer at its Support Center in St. Louis, Missouri, to constitute an appropriate unit. An election is scheduled for March 25, 2015.

The Employer's Request for Review should be denied as it raises no compelling reasons requiring review.

The Employer first asks the Board to reevaluate its decision in *Specialty Healthcare*, which the Regional Director applied in this case, because that decision allegedly departs from prior precedent. However, the Sixth Circuit upheld *Specialty*

Healthcare, and the Board has since repeatedly endorsed it. In addition, *Specialty Healthcare* merely clarified the law and did not depart from precedent.

Second, the Employer contends that the Regional Director's Decision is clearly erroneous because the Regional Director failed to consider prior bargaining activity. The evidence shows that the Union and Employer are party to a labor agreement at a separate facility covering different employees with no alleged association with the shop. The Board does not defer to prior bargaining history at other facilities. Notwithstanding, the parties' CBA is for a unit of maintenance employees like the petitioned-for unit.

Third, the Employer argues that the Decision is clearly erroneous because the Regional Director did not find an overwhelming community of interest between the petitioned-for unit and other hourly employees. But, the record shows that the maintenance electricians are in their own department, with their own supervision, have unique skills, and perform their own duties. There is little overlap in job functions and no interchange between the maintenance and production employees.

II. FACTS

The Employer manufactures proprietary pet food making equipment for Nestle facilities around the world. (Tr. 16.) It divides its operations at the Support Center into various departments. (Er. Ex. 1; Tr. 20, 33-36.) The shop, consisting of the foundry, machine shop, assembly team, welding team, grind/paint team, and warehouse, is located on the ground floor, and is responsible for manufacturing pet food making equipment and related parts, storing them, and shipping them to other Nestle facilities. (Tr. 97-107.) The maintenance department is on the mezzanine level, toward the back of the building. (Tr. 151, 166, 181.) Its employees repair and fix the machines used to

make the equipment. (Tr. 56, 169-170.) They also maintain the facility. (Tr. 34.) Other departments and employees, including engineering, designers, customer service, HR, and accounting, are upstairs toward the front of the building. (Tr. 182.)

There are 52 shop employees at the plant, including several working leads. There are three maintenance electricians: Dave Mertzlufft, Tim Williams, and Andy Wenk. Mertzlufft and Williams are classified as Electrical Maintenance Mechanics (Maintenance Class A). Wenk is the Maintenance Leadman. (Er. Ex. 4, 5 & 7.)

Dwight Howdeshell is the Plant Manager and oversees all operations. (Tr. 14.) He supervises Wenk, who in turn directs and assigns tasks to the maintenance employees. (Tr. 92-94.) He and Wenk review and evaluate the maintenance electricians. (Tr. 131, 221.) Tyler Simpson is the Shop Supervisor. (Er. Ex. 1.) He supervises and evaluates the shop employees. (Tr. 132.) He oversees Mike Martin, the Welding Team Leader, and the working leads in each of the departments in the shop, who in turn oversee the shop employees. (Tr. 132.)

The maintenance employees perform all aspects of electrical, mechanical, and general maintenance at the plant, including troubleshooting, repairs, and intensive maintenance programs. (Er. Exs. 4 & 5, Tr. 164.) They spend much of their time moving around the shop floor with work carts, fixing problems as they arise, including motors, pumps, slurry machines, belts, lathes, and mills. (Tr. 184-185, 193-194, 197, 208.) They also work on planned maintenance, like greasing, oil changing, and inspecting electrical cabinets. (Tr. 153, 189.) In addition, they tend to longer-term projects, such as replacing ballasts. (Tr. 192-193, 196.) The maintenance electricians

spend some time in the maintenance office each day, checking e-mails, completing paperwork, using reference books, and ordering parts as needed. (Tr. 157, 166, 188.)

The Maintenance Leadman plans, schedules, and directs maintenance work. (Er. Ex. 5.) He also performs the same duties as the maintenance electricians and oversees contractors performing electrical work in the plant. (Tr. 27, 55, 116, 125.)

The maintenance department is in the process of developing preventative maintenance schedules for shop equipment. (Tr. 195, 207.) Wenk gives the maintenance electricians work orders and asks them to expand on things and fill in details like what work needs to be done every six months. (Tr. 208.) Wenk then puts the information into the computer system for the next time maintenance on the equipment is needed. (Tr. 208.)

The shop employees manufacture parts and equipment. (Tr. 97-107.) The employees in the foundry pour metal and cast and cut parts. (Tr. 97-98, 165.) They use slurry machines, wax molds, and ovens. (Tr. 35-36.) Employees in the machine shop create metal parts. (Tr. 109.) They use CNC machines, water jets, lathes, and mills. (Tr. 35, 109, 164.) Employees in the assembly area are responsible for assembling parts into the machinery that is sold. (Tr. 99.) They use presses, cranes, wrenches, vibration analysis equipment, impact guns, and saws. (Tr. 100, 165.) Employees on the paint/grind team finish grinding screws and clean and paint equipment. (Tr. 102-103.) They use sandblasters and paint guns. (Tr. 103, 165-166.) Employees in the welding area are responsible for welding parts onto equipment, like troughs and frames. (Tr. 99, 101.) They use welders, brakes, and plasma cutters. (Tr. 34, 101, 165.) Employees in the warehouse ship equipment. (Tr. 105-106.) They use

saws for crate assembly, and air guns and nailers. (Tr. 104.) They are also responsible for entering information into the automated receiving system. (Tr. 105.)

Shop employees follow "production schedules" established by management. (Tr. 138.) There are work orders for the manufacture of each part. (Tr. 138.) The work orders move from department to department -- from foundry to machining to assembly, and all the way to inventory. (Tr. 138-139.) Each working lead, in each department in the shop, is responsible for monitoring the work flow of finished manufactured parts and for managing the process in his or her department. (Tr. 139.) Work orders in the production flow do not go to the maintenance department. (Tr. 140.) There are separate work orders for fixing equipment, which maintenance employees generate as problems arise. (Tr. 140, 157, 194.)

With limited exceptions, shop employees stay in their own departments and work on their own machines. (Tr. 100-101, 102, 105.) Foundry employees do not work in the welding department; assembly employees do not work in the machine shop, and so on. (Tr. 100-101, 104.) A few of the shop employees used to work in other departments and fill in and work in other shop departments maybe once or twice per year. (Tr. 104, 107, 110.) Warehouse employees may go to other departments, like assembly, to pick up a completed piece of equipment for shipping. (Tr. 108.) But, they do not assemble, weld, machine, or paint equipment. (Tr. 108-109.)

Maintenance employees go into other departments to fix and maintain machines in those departments. (Tr. 56, 169-170, 185.) They may change out a motor, rewire a pump, or troubleshoot a circuit. (Tr. 119, 186, 197.) While there, they do not perform any production work. (Tr. 209.) Shop employees tell them about the problem that

needs to be fixed. (Tr. 197-198, 233.) The maintenance employee listens to the shop employee explain the problem, and then analyzes the issue and makes the repair himself. (Tr. 203.) Shop employees may lend a hand, by moving a table or starting a machine. (Tr. 202-203.) But, they do not involve themselves in making the repairs. (Tr. 194, 197, 203.)

Maintenance employees also perform intensive planned maintenance on machines. They shut down the equipment and look at belts, change all the filters, and change the coolant. (Tr. 190-191.) They are also looking for other problems, like bad bearings, loose wires, and burnt up fans. (Tr. 191.) Howdeshell testified that operators perform a variety of maintenance tasks in their areas of responsibility, such as changing fluids and disposing of chips. (Tr. 45, 48, 62, 115.) He described this work as routine. (Tr. 157.) Mertzlufft testified that the only maintenance work he sees operators performing on a regular basis is topping off their oil and filling tanks with coolant. (Tr. 204.) He also sees an operator rebuilding a water jet in the machine shop once per month. (Tr. 205.) He does not see employees in the foundry, welding area, paint area, assembly area, or warehouse performing any maintenance work. (Tr. 205-206.)

Maintenance employees provide their own hand tools, including volt meters and wire strippers. (Tr. 183.) All three maintenance employees are journeymen electricians and went through a four-year apprenticeship with the IBEW where they studied electrical theory and the electrical code. (Tr. 127-128, 171.) Mertzlufft was asked during his job interview if he was a journeyman. (Tr. 174.)

Maintenance employees spend 30% of their time on electrical work. (Tr. 199, 240-241.) Mertzlufft stated that he makes assessments about electrical systems daily,

from one to five times per day. (Tr. 201.) He explained that a lot of times to assess a mechanical problem, he has to investigate the electrical aspect of the problem; or, if a bearing goes out, he has to unhook the wires to remove the motor, which is electrical. (Tr. 199-201, 241.)

Shop employees are not allowed to perform any electrical work. (Tr. 51.) The only employees who are electrically authorized, per Employer rules, are the maintenance electricians. (Tr. 51, 118.) The Employer sends the maintenance employees to a special class where they learn about electrical safety and the personal protective equipment they should wear when they are working on electrical systems and wires. (Un. Ex. 3; Tr. 118, 249-250.)

Shop employees do not fill in or cover for maintenance employees, and maintenance employees do not fill in or cover for shop employees. (Tr. 157-158, 219-220.) The maintenance electricians are the only employees at the plant that perform skilled maintenance work. (Tr. 203-204.) Mertzlufft testified that if a working lead in the shop asks him to fix a piece of equipment and he has another job going on, then he tells the lead that he is busy right now. (Tr. 210-211.)

Employees work a variety of times and shifts. Some employees work four 10s; others work five 8s. (Tr. 62, 175.) The machine shop works two shifts. (Tr. 130.) Decisions on start times and work days are made on a departmental basis. (Tr. 62, 176, 251.) Mertzlufft and Williams both work five 8s. Mertzlufft starts at 5:00 a.m. and Williams starts at 7:00 a.m. (Tr. 62.) Their start times are staggered so they can cover the entire first shift at the plant and minimize overtime. (Tr. 63.) They take lunch when

they can and sometimes eat with other employees. They take one break in the morning, but not at a scheduled time. (Tr. 176-177.)

III. DISCUSSION

A. The Regional Director's Decision properly relied on *Specialty Healthcare*.

The Employer devotes the majority of its request for review to arguing that *Specialty Healthcare* was wrongly decided. The Employer relies on *Lundy Packing*, a Fourth Circuit case decided years before *Specialty Healthcare*.

The Employer ignores that *Specialty Healthcare* was enforced by the Sixth Circuit in *Kindred Nursing Centers East LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013). The arguments the Employer makes here are the same arguments made by the employer in that case, which were wholly rejected. The Sixth Circuit found that the overwhelming community of interest standard "is not new" to unit determinations, citing past Board cases that had used the standard. *Id.* at 561. The Court concluded that the Board had "cogently explain[ed]" its reasons for adopting the standard: the Board had sometimes used different words to describe the standard and needed to clarify its law. *Id.* at 562.[1] The Court also rejected the employer's arguments that the overwhelming community of interest test violates Section 9(c)(5) and that the Board should have engaged in rulemaking. *Id.* at 565. The Board did not make the extent of organizing controlling, and *Specialty Healthcare* did not change the law. *Id.*

[1] In addition to the prior Board cases cited by the Sixth Circuit in *Kindred*, the Board in *Ore-Ida Foods, Inc*., 313 NLRB 1016 (1994), rejected the employer's specific assertion that a unit of maintenance employees shared a "close community of interest" with production employees. *Id.* at 1018. There is no substantive difference between an "overwhelming" and a "close" community of interest. The Board in *Ore-Ida* analyzed the facts and issue -- whether a unit of maintenance employees is an appropriate unit -- in the same manner it would analyze the facts and issue under *Specialty Healthcare*. This shows even further that the Board has used the same standard before, just with slightly varying verbal formulations.

The Employer also ignores the D.C. Circuit's decision in *Blue Man Vegas, LLC v. NLRB*, 529 F.3d. 417 (D.C. Cir. 2008). As here, the employer in that case argued that the Board had failed to heed the Fourth Circuit's decision in *Lundy Packing*. The D.C. Circuit disagreed. The employer's reading of *Lundy Packing* reflected "a misapprehension of the governing framework" for unit determinations as well as "a misreading of the Fourth Circuit's opinion." *Id.* at 423. The objection in *Lundy Packing* was the combination of the overwhelming community of interest test and the Board presuming that the union's proposed unit is proper. *Id.* The Court ruled that, as long as the Board applies the overwhelming community of interest standard *after* it has been determined that the employees in the proposed unit constitute a readily identifiable group who share a community of interest, showing that the petitioned-for unit is *prima facie* appropriate, "the Board does not run afoul of the statutory injunction that the extent of the union's organization not be given controlling weight." *Id.*

Thus, contrary to the Employer's repeated claims, *Lundy Packing* does not prohibit the test that the Regional Director applied in this case. He did not presume that the Union's proposed unit was proper. Rather, consistent with *Lundy Packing*, *Blue Man Vegas*, and *Specialty Healthcare*, the Regional Director first made the determination that the petitioned-for unit was an appropriate unit by considering whether the maintenance employees were readily identifiable as a separate group and shared a community of interest. (RD Dec. at 13-20.) He then applied the overwhelming community of interest standard. Notably, the Regional Director never departed from the principle that the Act only requires the unit sought by the petitioner to be *an* appropriate unit, not the most appropriate unit. The Employer's arguments contravene this

principle.[2] Because a unit need only be an appropriate unit, there may be more than one appropriate unit. In this regard, the Board recognizes that a larger group of employees may share some community of interest factors with a smaller proposed unit. But, that does not mean that there is no reasonable basis to exclude them from the proposed unit. Otherwise, there could not be more than one appropriate unit.

The Employer incorrectly argues that *Specialty Healthcare* mandated the Board to look solely at the petitioned-for unit in making a unit determination. As noted in *Blue Man Vegas*, this is not the test. Rather, the Board first determines whether employees in the petitioned-for unit share a community of interest and is therefore *prima facie* appropriate. In doing so, it naturally compares the petitioned-for employees with other employees. This is what the Regional Director did in this case. In determining whether the maintenance employees shared a community of interest, the Regional Director compared the wage rates between the maintenance employees and other hourly employees (RD Dec. at p. 16), compared their hours and break times (RD Dec. at p. 17), compared their supervision (RD Dec. at p. 17), compared the functions of the maintenance employees versus the production employees (RD Dec. at p. 18), compared their areas of work (RD Dec. at p. 18), and compared their skills and training. (RD Dec. at 18). The Regional Director also considered the Employer's claim that the maintenance and production employees are functionally integrated under its "One Team" approach, and compared the work of maintenance employees with the work flow for the manufacture of equipment. (RD Dec. at p. 19.) The Regional Director did exactly what the Employer wants the Board to do and reached the right result.

[2] At the close of the hearing, the Employer represented that "the smallest appropriate unit is one that would include all hourly employees in the facility." (Tr. 253.)

The Employer also claims that *Specialty Healthcare* is inconsistent with prior results in maintenance unit cases. This is mistaken. Prior to *Specialty Healthcare*, the Board regularly found separate maintenance units to be appropriate. For example, in *Ore-Ida Foods, Inc*., 313 NLRB 1016 (1994), the Board concluded that a unit of maintenance employees constituted an appropriate unit where the maintenance employees were in a separate department with their own supervisors and were highly skilled. *Id.* at 1019. The Board was unswayed by evidence that production workers often assisted maintenance workers in repairing machinery. The production employees did so mainly by "lending a hand," and such work was unskilled and peripheral to actual repair work. *Id.* at 1020. Likewise, in *Capri Sun, Inc*., 330 NLRB 1124 (2000), the Board found a unit of maintenance employees to constitute "a distinct and cohesive grouping of employees" where they performed skilled functions such as electrical repair that production employees did not perform, and there was no evidence that they were temporarily assigned to production jobs. *Id*. at 1125. While the record showed "some overlapping preventative and light maintenance functions" between employees, the Board noted that the maintenance work performed by the production employees, such as greasing and adjusting machines, cleaning pumps, and rebuilding valves, was "generally lesser skilled and routine," and held that some overlap of lesser skilled duties did not negate the separate identity of the proposed maintenance unit. *Id.* at 1126 & n.9. *See also Sundor Brands, Inc*., 334 NLRB 755 (2001) (separate maintenance unit); *Yeungling Brewing Company,* 333 NLRB 892 (2001) (same).

The Board has also certified units of maintenance electricians based on craft status. *See, e.g., Anheuser-Busch, Inc.*, 170 NLRB 46 (1968) (maintenance electricians

all had at least 3 to 4 years experience before going to work with Anheuser-Busch and had served formal apprenticeships). That such employees perform other types of work, such as mechanical work, does not mean that they are not skilled. *See NLRB v. Metal Container Corp*., 660 F.2d 1309 (8th Cir. 1981) (upholding certification of unit of four production-support electricians in facility with 110 production employees even though 50% of maintenance work is non-electrical).

The facts here align closely with past Board cases finding maintenance and craft units appropriate. The maintenance employees have their own department with separate supervision. They work hours specific to their department and take breaks when possible. They do not perform production work, and there is no evidence of interchange with production employees. While maintenance electricians interact with production employees when making repairs to equipment, maintenance employees make decisions on their own about the repairs. Production employees merely lend a hand. Moreover, the maintenance employees are highly skilled, in traditional craft positions, performing electrical work that other employees at the plant are not qualified to perform. The maintenance employees are all journeymen electricians. They have knowledge of electrical theory and the National Electrical Code, which they use when working on electrical systems. Their job descriptions state that they are required to have one or more years experience in a machine shop, the electrical trades, or in buildings and facilities maintenance, and that knowledge of PLCs (programmable logic controllers) is a plus. By comparison, shop employees do not have these skills and experience. While they perform some routine maintenance work, like filling tanks with coolant, they do not perform more skilled maintenance work.

The cases where the Board has rejected petitions for separate maintenance units are distinguishable. Typically, there is a significant degree of overlap of functions among employees and substantial interchange. In *TDK Ferrites Corp.*, 342 NLRB 1006 (2004), certain maintenance employees called "technicians" spent a portion of their workweek operating production equipment. Some of the employees in the petitioned-for unit also relieved production workers and were supervised by production employees. *Id*. at 1007. In *Buckhorn, Inc*., 343 NLRB 201 (2004), the maintenance employees performed the same work as production employees during a mold changing process, regularly assisted employees in the warehouse, filled in for production employees, and were sometimes supervised by the shift production supervisor. *Id.* at 203-204. There was also evidence that two-thirds of the maintenance employees were hired from the ranks of production employees and that four production employees were previously maintenance employees. By contrast, here, there is no evidence of interchange. The maintenance and production employees do not fill in for each other. Nor is there evidence of common supervision. The maintenance department is under the Plant Manager and Maintenance Leadman, while shop employees report to the shop supervisor through their working leads and the Welding Team Leader. The Employer claims that sometime in the future, at some undefined time, the maintenance department will be put under the shop supervisor. (Tr. 133.) But, this has not happened and is too speculative a claim to require a combined unit.

The Employer also relies on *Peterson/Puritan, Inc*., 240 NLRB 1051 (1979). But, the union there sought to represent a sub-group of line mechanics that only worked on the production line, and not eight other maintenance employees who were journeymen

and worked throughout the plant. *Id.* at n. 2. The Board also noted that the line mechanics were not highly skilled and a number of them were former production employees. By contrast, here, the Union seeks to represent every maintenance employee at the plant, all of whom are highly skilled. In addition, none of the maintenance employees came from production. They were hired from outside the plant.

Finally, the Employer's suggestion that the Regional Director's decision is fatally flawed because it is allegedly inconsistent with a case from one Court of Appeals is not a compelling reason for review. The Board's "duty to apply uniform policies under the Act, and the Act's venue provisions for review of our decisions, make it impractical for [the Board] to acquiesce in every contrary decision by the Federal courts of appeals." *TCI West, Inc.*, 322 NLRB 928, 928 (1997) (citing *Arvin Industries*, 285 NLRB 753, 757-758 (1987)); *see also Tim Foley Plumbing Service, Inc*., 337 N.L.R.B. 328, n.5 (2001) (no basis to reverse ALJ decision on theory that reasoning may be contrary 7th Circuit precedent). The Board has endorsed *Specialty Healthcare* in subsequent decisions. *See, e.g., Macy's Inc.*, 361 NLRB No. 4 (2014). It has also denied requests for review similar to this one. *See Nestle Dryer's Ice Cream*, Case 31-RC-66625, 2011 NLRB LEXIS 759 (NLRB Dec. 28, 2011) (denying Nestle's request for review). The Board has adequately explained the overwhelming community of interest test and does not need to revisit the standard in this case.

B. The Regional Director did not err in rejecting the Employer's claims about the parties' collective bargaining agreement at a separate facility.

The Employer faults the Regional Director for not relying on the parties' multi-union CBA at a separate facility. It cites language in *Specialty Healthcare* that the community of interest test focuses on how the employer has chosen to structure its

workplace except in situations "where there is prior bargaining history." 357 NLRB No. 83, slip op. at 1 & n.19. The Employer argues that the Regional Director should have viewed the parties' prior history as "conclusive" and required any unit to include the "same swath of employees" covered under the existing CBA. (Er's Request at p. 39.)

The Employer takes the language in *Specialty Healthcare* on prior bargaining history out of context. The language clearly refers to prior bargaining history at the facility at issue. The reference to no bargaining history in the fact section of the decision follows two sentences about the Employer's facility in Mobile, Alabama and the various types of employees at that facility. *Id.* at slip op. 1. And, the language in footnote 19 about how the employer has chosen to structure its workplace refers to "the employer's particular workplace." *Id.* at n. 19.

The Board does not make bargaining history at a separate facility controlling in a unit determination. *Heublein, Inc*., 119 NLRB 1337, 1339 (1958) (it is immaterial that no separate maintenance units have been established at other plants); *see also NLRB v. Metal Container Corp*., 660 F.2d 1309 (8th Cir. 1981) (upholding unit of four maintenance employees despite wall-to-wall production and maintenance units). The Board also does not defer to bargaining history determined by the parties where the Board did not make a decision on the appropriateness of the unit. *Laboratory Corp. of Am. Holdings*, 341 NLRB 1079, 1083 (2004). The bargaining history here is inconclusive. There is no evidence on which unions bargain for which employees at the separate facility or how the unit was determined. It is illogical to claim that *Specialty Healthcare* is inapplicable in this case, when the Board would not defer to the bargaining history that the Employer seeks to rely on.

Indeed, it would be anomalous to make a different CBA conclusive. A reason why the Board considers prior bargaining history in some cases is that at an organized facility the employer and union have co-determined the structure of the workplace through bargaining. At unorganized facilities, the employer has structured the workplace on its own. Applying a CBA from a separate organized facility to an unorganized facility for purposes of making a unit determination could make the extent to which the union has organized employees controlling. This is exactly what the Employer argues against.

Even assuming the CBA applies, it supports a maintenance only unit. The CBA's recognition clause lists various employees, including maintenance mechanics, electricians, plumbers, painters, and carpenters. (Un. Ex. 1 at p. 3.) Article 10, Section 10 of the CBA further defines maintenance mechanics to include individuals designated as carpenters, electricians, plumbers, painters and millwrights, and defines laborers as individuals who assist maintenance mechanics. (Un. Ex. 1 at p. 14.) The hourly wage schedule lists two types of employees: maintenance mechanics and laborers. (Un. Ex. 1 at p. 20.) Thus, the CBA is for a maintenance unit. It is not a wall-to-wall unit. Rather, it includes the same type of employees that the petitioned-for unit includes.

The Employer also argues that, had the Regional Director applied the traditional community of interest test, he would have found a combined maintenance and production unit appropriate. In actuality, the Regional Director did not need to rely on *Specialty Healthcare*. Consistent with prior Board cases on maintenance employees, and under the traditional community of interest test, the record shows that the interests of the maintenance employees are sufficiently distinct from the production employees.

Here, the maintenance employees have separate supervision. The Maintenance Leadman assigns them tasks and evaluates them, not Team Leaders or working leads in other departments. Maintenance employee wage rates are clustered toward the higher end of the Employer's wage scale. The Maintenance Leadman is the highest paid hourly employee at the plant and the two other maintenance electricians make more than many other classifications. The Employer's common benefit plans and workplace policies are outweighed by other factors. The maintenance employees are in their own department and work hours and take breaks specific to them. They are also the only journeymen electricians at the plant, and the only employees who receive special annual electrical training.

The Employer's "One Team" approach does not trump how the Employer actually structures its operations. The record shows that maintenance employees have a separate role in the manufacturing process. They fix and maintain equipment. They do not perform production work and are not part of the workflow of manufacturing equipment. Conversely, production employees do not perform skilled maintenance work or fill in for maintenance employees. The fact that production employees communicate with maintenance employees about things that need to be fixed and perform some unskilled maintenance on their own equipment does not negate the separate identity of the proposed maintenance unit. *See Sundor Brands, Inc.,* 334 NLRB 755 (2001) (although maintenance employees have contact with production employees on shop floor, this in itself does not show functional integration); *Capri Sun, Inc*., 330 NLRB 1124 (2000) (while there are "some overlapping preventative and light maintenance functions" between employees, the maintenance work performed by the

production employees is “generally lesser skilled and routine” and does not negate the separate identity of proposed maintenance unit).

C. The Regional Director did not err in applying *Specialty Healthcare* and excluding the production employees.

The Employer argues that all hourly employees share an overwhelming community of interest. This claim is unavailing.

In *Specialty Healthcare*, the Board held that two groups share an overwhelming community of interest and must be in the same bargaining unit when the traditional community of interest factors “overlap almost completely.” 357 NLRB No. 83, slip op. at 12. Here, the production employees share virtually no overlapping factors with the maintenance electricians. The production employees work in separate departments, in separate physical places, and under separate supervision. For the most past, they stick to their areas. An assembler, for example, does not work in the foundry. The shop employees also perform different job functions that require their own skills. The foundry workers cast metal. The machinists make precision cuts. The assemblers put parts together. The maintenance employees do not do this work. Rather, they have their own duties. *DTG Operations, Inc*., 357 NLRB No. 175, slip op. at 7 (2011) (even though employer’s facility is functionally integrated, employees do not share an overwhelming community of interest where each classification has a “separate role in the process”).

The Employer argues that machinists, assemblers, and painters should be included in the unit because, according to job descriptions, they perform some maintenance tasks as part of their job. However, the record shows this work is limited. Mertzlufft stated that he sees operators filling the well oil on their machines and adding coolant to tanks. (Tr. 189.) This work simply requires reading a refractometer and

making sure you have the proper level. (Tr. 190.) Mertzlufft also testified that he does not see employees in the foundry, welding, paint area, assembly department, or warehouse performing any maintenance work. (Tr. 205-206.)

At any rate, the fact that production employees perform some routine maintenance work does not mean that they share an overwhelming community of interest with maintenance employees. They are not making technical assessments and are not trying to fix problems like maintenance employees. *Capri Sun, Inc*., 330 NLRB at 1126. In addition, the Board has held that some overlap of functions, especially lesser skilled duties, does not mandate a larger unit. *See Grace Industries, LLC*, 358 NLRB No. 62, slip op. at 4 (2012) (although the evidence showed "some degree of overlap of functions," this alone does not render a separate unit inappropriate).

The Employer argues that all hourly employees are subject to the same policies. Of course, how some are applied varies from department to department. But, even accepting the policies as uniform, this factor does not demonstrate an overwhelming community of interest. The Employer must show that its policies make the business so functionally integrated as to blur the differences between the interests of the petitioned-for employees and the other employees. A single EEOC policy or a common parking lot does not satisfy this standard. *See Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (2011) (facts the employer relies on – that all of the employees operate under the same salary structure and personnel policies, share break facilities, and enjoy the same benefits – are outweighed by facts that the petitioned-for employees perform tasks distinct from the production-oriented jobs of other employees).

The Employer suggests that the Union seeks a unit of three employees because it has only organized support among this group. This contention proves too much. If the Union sought a unit of 2, or 20, or 40 employees, the Employer could argue the same – that the Union is simply seeking a unit it has organized. The fact of the matter is that Regional Director did not give controlling weight to the unit petitioned for. Instead, he identified and weighed various facts. The Employer calls the unit a "micro-unit." But, the size of the proposed unit is not alone a relevant consideration. In fact, a small, cohesive unit, free of conflicting interests, serves the purpose of the Act by facilitating effective bargaining. Finally, the Employer seems to urge that only a wall-to-wall unit ensures that other employees will not be disenfranchised. This is not what the law says. The Act allows a unit containing a "subdivision" of employees. The fact that a distinct group of maintenance employees at this facility have chosen to exercise their Section 7 rights does not prevent production employees from doing so too.

IV. CONCLUSION

For the foregoing reasons, the Petitioner requests the Board to deny the Employer's Request for Review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed with the Board on this 16th day of March 2015, via electronic filing, and that a copy was also sent via first-class mail, postage pre-paid, and e-mailed to the following:

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